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IN THE HIGH COURT OF JUDICATURE AT BILASPUR:
CHHATTISGARH

W.P. NO. 2001 OF 2003

Krishi Upaj Mandi Samiti
Pandri, Kapa
Raipur

Petitioner

VERSUS

Ravishankar Shrivastava
S/o Jagannath Prasad Shrivastava
Near Shitla Mandir, Handi Para
Raipur

Respondent

WRIT PETITION UNDER ARTICLE 226/227 OF
CONSTITUTION OF INDIA

003 Shrivastava

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 2001 of 2003

Petitioner Krishi Upaj Mandi Samiti
Versus
Respondent Ravishankar Shrivastava

Single Bench : Hon'ble Mr. Justice **Satish K. Agnihotri.**

Shri Goutam Bhaduri, counsel for the petitioner.

Shri N.K. Vyas, counsel for the respondent.

ORAL ORDER

(7th March, 2006)

1. The undisputed facts of the case are that the respondent was appointed as Nakerdar on daily wages basis on 13.8.1984. The respondent continued to work on the basis of Nakerdar without any break until 13.1.1989. Service of the respondent was removed without any notice or without payment of retrenchment allowance on 2.2.89.
2. Learned counsel raised the dispute before the Deputy Labour Commissioner, Chhattisgarh Region, Raipur under Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as "I.D. Act 1947"). The Deputy Labour Commissioner by his letter dated 27.1.90 referred the matter to the Presiding Officer, Labour Court, Raipur under the I. D Act 1947 on the following issue :-

"whether removal of the respondent from service was valid and proper ? if no what relief he was entitled to and in this respect what direction can be issued to the employer ?".
3. The Labour Court, after having considered case of both the parties, came to the conclusion that removal of the respondent was invalid as the same has been done as per Section 25-F of the I.D. Act 1947. The

respondent was neither given a notice nor paid retrenchment allowance as contemplated under Section 25-F of the I.D. Act 1947.

4. Accordingly the Labour Court, by his award dated 25.2.2003, quashed the removal order of the respondent and directed the petitioner to reinstate the respondent in service with full back wages.
5. Being aggrieved, the employer/petitioner has filed this petition under Article 226/227 of the Constitution of India on the ground that the appointment of the respondent was de-horse Section 30 of the C.G. Krishi Upaj Mandi Adhiniyam, 1972, which contemplates prior sanction of the Director before creation of any post.
6. Learned counsel for the petitioner states that the committee has taken decision to remove the respondent from his service along with 90 other persons on the basis of circular dated 8.1.89 issued by the State Government.
7. Shri N.K. Vyas, learned counsel appearing for the respondent submits that the proviso to Section 30 of the C.G. Krishi Upaj Mandi Adhiniyam, 1972, contemplates prior sanction of the Director, for creation of the post not for appointment on the post. The post of Nakerdar was already created, the question is of appointment of the respondent on the post of Nakerdar, therefore, proviso to Section 30 of the C.G. Krishi Upaj Mandi Adhiniyam, 1972 will not be applicable to the present case, where the dispute is not of creation of the post, but that of the appointment of the respondent on the post of Nakerdar already created earlier. Learned counsel further submits that the circular dated 8.1.89 issued by the State Government cannot be made applicable without examining each and every individual case, after giving proper opportunity of hearing. It is further contended that almost all the persons removed along with the respondent have been reinstated/reabsorbed.

8. I have heard learned counsel for the parties and perused the records and documents appended to the petition as well as to the return.
9. It is evident that the petitioner for the first time raised the issue that the appointment was de-horse the provisions of Section 30 of the C.G. Krishi Upaj Mandi Adhiniyam, 1972. Even otherwise, this provision is not applicable to the facts of the case as the issue involved is not the creation of the post, but appointment of the respondent on the post of Nakedar. The circular issued by the State Government cannot ipso facto be made applicable for removal of the employees, who were appointed prior to December, 1988.
10. The Labour Court has examined all the aspects before coming to the conclusion that the order of removal was bad.
11. This Court, in exercise of its jurisdiction under Article 226/227 of the Constitution of India has limited scope to interfere with the findings of the tribunal, unless there is no evidence to record such findings and there is perversity or infirmity in the award. No perversity or infirmity has been pointed out by learned counsel for the petitioner except that the appointment was de-horse the proviso to Section 30 of the C.G. Krishi Upaj Mandi Adhiniyam, 1972.
12. For the reasons stated above, it does not call for any interference with the impugned award dated 25.2.2003 except that full back wages granted to the respondent is not based on any facts. The Labour Court had not examined as to whether the respondent was entitled to 100% back wages without any work and further whether the respondent was employed elsewhere gainfully. Looking into the facts of the case that the respondent was employee on daily wages basis not against any sanctioned post. 50% back wages will be sufficient to subserve ends of justice.

SJ

13. The petition is accordingly allowed to the above extent to the effect that the order of reinstatement passed by the Labour Court is uphold and full back wages be modified to 50% back wages. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

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